

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JORDAN DAMALE BENSON, #02122645	§	
	§	
VS.	§	CIVIL ACTION NO. 4:22cv116
	§	
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt. #14) concluding that the petition for writ of habeas corpus should be denied and dismissed with prejudice as time-barred. Petitioner filed objections. (Dkt. #19).

In the objections, Petitioner argues that the Magistrate Judge erred by not holding an evidentiary hearing on the merits of the claims raised in his 28 U.S.C. § 2254 petition for writ of habeas corpus. However, because the Magistrate Judge recommended that the petition be denied and dismissed as time-barred, it was unnecessary to reach the merits of Petitioner's claims. Petitioner also reurges the arguments he raised in his response to Respondent's motion to dismiss. Despite his arguments and submission of additional documentation of his mental condition, Petitioner fails to show that he is entitled to statutory or equitable tolling or to an actual innocence exception to excuse the statute of limitations. The mental health records (Dkt. #19-2, pp. 2-8) pre-dating the relevant limitations period are not particularly relevant; however, they do confirm that Petitioner has suffered from a mental condition. The mental health records dated during the relevant limitations period indicate that notwithstanding Petitioner's mental health condition, Petitioner appeared oriented, cooperative, coherent, and logical; his thought content was appropriate; and his judgment and insight were unimpaired. (Dkt. #19-2, pp. 9-16). These mental


health records are consistent with the Magistrate Judge's finding that Petitioner's mental condition did not cause him to be unable to pursue his legal remedies during the relevant limitations period.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** that Respondent's motion to dismiss the petition as time-barred (Dkt. #9) is **GRANTED** and that the petition for a writ of habeas corpus is **DENIED** and **DISMISSED** with prejudice. A certificate of appealability is **DENIED**.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 26th day of April, 2023.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE